REMARKS

Figure 2 has been amended to correct the reference numeral for the storage device to read 195 in accordance with the specification, thereby removing the conflict with the ACR card 175. Applicants respectfully request the objection to the drawings be withdrawn.

The specification was amended on page 15 to correct the reference number for the privileged modem driver 190. Applicants respectfully request the objection to the specification be withdrawn.

Claim 7 was amended to correct the informality identified by the Office Action. Applicants respectfully request the objection to the claims be withdrawn.

Claims 1, 8-10, and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 6,014,705 (Koenck). Claims 2-7, 11-20, and 22 stand rejected under 35 U.S.C. § 103(a) as being obvious over Koenck in view of United States Patent Publication No. 2002/0124108 (Terrell).

Claims 1, 11, 12, 20, and 21 include the general features of a processing unit adapted to execute a privileged driver for configuring the physical layer (i.e., control codes) of a transceiver.

The Office Action, in rejecting claims 1, 8-10, and 21, asserts that Koenck teaches these features. The rejection of claim 1 recites that Koenck teaches "a processing unit ... adapted to execute a driver (inherent ...) for interfacing with the physical layer hardware." However, claim 1 includes the feature of a "privileged driver." Koenck does not teach or suggest a privileged driver. As defined by Applicants on page 7, 'super-privileged code, in accordance with the present invention, comprises a set of computer instructions having a high security level that controls access to selected resources of the computer system 100," and "privileged modem driver

105 operates under the SPC context, such that it has a higher degree of security than the standard operating modes of the processors 105."

The Office Action makes an inherency argument regarding the Koenck's driver. Inherency in anticipation requires that the asserted proposition *necessarily* flow from the disclosure. *In re Oelrich*, 212 U.S.P.Q. (BNA) 323, 326 (C.C.P.A. 1981); *Levy*, 17 U.S.P.Q.2d (BNA) at 1463-64; *Skinner*, at 1789; *In re King*, 231 U.S.P.Q. (BNA) 136, 138 (Fed. Cir. 1986). It is not enough that a reference could have, should have, or would have been used as the claimed invention. "The mere fact that a certain thing <u>may</u> result from a given set of circumstances is not sufficient." *Oelrich*, at 326, quoting *Hansgirg v. Kemmer*, 40 U.S.P.Q. (BNA) 665, 667 (C.C.P.A. 1939); *In re Rijckaert*, 28 U.S.P.Q.2d (BNA) 1955, 1957 (Fed. Cir. 1993), quoting *Oelrich*, at 326; *see also Skinner*, at 1789. "Inherency... may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Ex parte Skinner*, 2 U.S.P.Q.2d (BNA) 1788, 1789 (Bd. Pat. App. & Int. 1987), citing *In re Oelrich*, 666 F.2d 578, 581 (C.C.P.A. 1981). The Office Action fails to show how Koenck inherently uses a privileged driver. Because Koenck never mentions a privileged driver or even the general use of secure code, it does not follow that Koenck inherently uses such a driver.

For these reasons, claims 1, 21, and all claims depending therefrom, are allowable. Applicants respectfully request the rejection of these claims be withdrawn.

Regarding the rejection of claims 2-7, 11-20, and 22, the Office Action states that Koenck teaches different level of privilege by using priorities of instructions. Priority and privilege are not synonymous. Addressing priority only considers the order in which instructions are executed, not whether the application has the security privilege for executing them. As

admitted by the Office Action, Terrell relates to security between applications, not between a driver and its controlled peripheral. As such there is no motivation to combine Koenck and Terrell.

Moreover, Terrell describes providing security to defined virtual interface channels, where applications may give access to their data to other applications. Applicants define privileged instructions, not data regions, that require privilege to execute. Even if assuming *arguendo* that Koenck and Terrell could be combined, the result would not equate to a privileged driver for interfacing with physical layer hardware. At most, Terrell teaches how to keep other applications from altering the data and instructions used by the driver, not how to prevent another application from accessing the physical layer hardware. Applicants defines privileged instructions for accessing the physical layer hardware. Terrell fails to teach or suggest this feature, and therefore fails to correct the defects identified above with Koenck. For these reasons, claims 1, 11, 12, 20, 21, and all claims depending therefrom are allowable. Applicants respectfully request the rejection of these claims be withdrawn.

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to contact the undersigned attorney with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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